IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 38 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MUSTAN AHMEDALI BARIYAWALA

Appearance:

1. Criminal Revision Application No. 38 of 2001

MR DESAI, ADDL. PUBLIC PROSECUTOR for Petitioner No. 1

MR JAYRAJ CHAUHAN for Respondent No. 1

MR TRILOK J PATEL for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/10/2002

ORAL JUDGEMENT

The State Government has approached this Court

seeking following reliefs:-

(A) That the Hon'ble Court be pleased to call for the record and proceedings of Criminal Appeal No. 460 of 1993 from the Court of the learned JMFC, Devgadbhariya and after perusing the same be pleased to quash and set aside the order dated 2.6.2000 passed by the learned Judicial Magistrate First Class, Devgadhbariya and further be pleased to direct the learned Magistrate to frame charge against the accused after giving an opportunity to the prosecution to lead evidence and proceed further with the case according to law.

Learned JMFC, Devgadbhariya passed an order in Criminal Case No. 460 of 1993 on June 2, 2000, dismissing the complaint lodged by Food Inspector against present respondent. Learned Magistrate observed that the case is very old, the complainant is not present for last five adjournments, the complainant was informed about the date and still he has chosen not to remain present and therefore, the complaint is dismissed and the accused is acquitted.

The copy of the Rojkam indicates that factually there is no dispute about the observations made by the learned Magistrate. From various affidavits filed which are on record, it is clear that it is a case where two different limbs of the Government are fighting each other inter-se on question, whose responsibility it is to pursue and prosecute a case under Food Adulteration Act and each of them trying to shift their liability to the shoulder of other. The fact remains that the prosecution failed to pursue the complaint for a prolonged time, despite Court's notice. No error can be said to have been committed by the trial Court which would call for interference at the hands of this Court in exercise of revisional jurisdiction. Learned APP Mr. Desai was at loss to indicate any reason for interference with the order on merits. The revision application therefore must fail. Same is dismissed. Rule is discharged.

(A.L.Dave, J.)

*/Mohandas